

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

DUKE PROGRESS ENERGY LLC,

Plaintiff,

v.

3M COMPANY et al.,

Defendants.

No. 5:08-CV-460-FL

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CONSOLIDATION COAL COMPANY,

Plaintiff,

v.

3M COMPANY et al.,

Defendants.

No. 5:08-CV-463-FL

**ORDER**

These consolidated cases<sup>1</sup> come before the court on the motions by various parties to have certain individuals excused from the requirements for in-person attendance at the settlement sessions to be conducted in Raleigh, North Carolina on 1-2 September 2015 and 24-25 September 2015. These motions are set forth below:

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<sup>1</sup> Case number 5:08-CV-460-FL is the lead case number for three consolidated actions brought by plaintiff Duke Energy Progress, LLC (*see* 18 Aug. 2009 Minute Entry (D.E. 91) (consolidating cases)) and is referred to herein as “No. 460.” Case number 5:08-CV-463-FL is the lead case number for three consolidated actions brought by plaintiff Consolidation Coal Company (*see id.*) and is referred to herein as “No. 463.” The parties’ respective filings related to the motions to be excused are identical in both the No. 460 and No. 463 cases.

<b>Movant(s)</b>	<b>Motion D.E. (No. 460 case)</b>	<b>Motion D.E. (No. 463 case)</b>
N.L. Industries, Inc.	1610, 1631 (suppl.) <sup>2</sup>	1602, 1623 (suppl.)
Alcan Primary Products Corporation	1613, 1633 (suppl.) <sup>3</sup>	1605, 1625 (suppl.) <sup>4</sup>
Cogentrix Energy, LLC	1615, 1636 (suppl.)	1607, 1628 (suppl.)
Consolidation Coal Company	1617	1609
Buist Electric, Inc.; GenCorp Inc.	1618	1610
Appalachian Power Company; General Extrusions, Inc.; Haines and Kibblehouse, Inc.; Kingsport Power Company; MidAmerican Energy Company; South Central Power Company; Sumter Electric Cooperative, Inc.; The Holladay Corporation	1621	1613
Southern Alloy Corporation	1622	1614
Monongahela Power Company; West Penn Power Company	1623	1615
Truland Corporation	1624, 1646 (suppl.)	1616, 1638 (suppl.)
Consolidation Coal Company; Duke Energy Progress, LLC	1625	1617
East Kentucky Power Cooperative, Inc.; G&S Motor Equipment Company, Inc.; Jet Electric Motor Co., Inc.; P.C. Campana, Inc.; Pactiv Corporation; Mass. Electric Construction Co.	1626	1618
Saint Augustine's College	1627	1619
Danny Corporation; Electric Control Equipment Co.; Southland Electrical Supply, Inc.; St. Joseph Medical Center, Inc.; Tri-State Armature & Electrical Works, Inc.; United Technologies Corporation; Washington Suburban Sanitary Commission; Glenwood Resolution Authority, Inc.; Blue Ridge Electric Cooperative, Inc.; Sonoco Products Company; Gladieux Trading & Marketing Co., LP, and/or Limited Corporation; LWB Refractories Company; Dixon Lumber Company, Inc.; GKN Driveline North American, Inc.; Unimin Corporation; Broad River Electric Cooperative, Inc.; Pharmacia Corporation; Consumers Energy Company	1628, 1629 (mem. in support)	1620, 1621(mem. in support)
Bay Mechanical & Electrical Corporation	1630	1622
Caterpillar Inc.	1632	1624
Batesville Casket Company, Inc.	1634	1626
Huntsville Utilities	1635	1627
National Railroad Passenger Corporation	1637	1629
J.C. Blair Memorial Hospital	1638	1630
Riley Power Inc.	1639	1631

<sup>2</sup> A filing of a supplement or amendment to the original motion is indicated by “(suppl.).”

<sup>3</sup> It appears that a duplicate copy of D.E. 1633 was filed at D.E. 1650.

<sup>4</sup> It appears that a duplicate copy of D.E. 1625 was filed at D.E. 1641.

<b>Movant(s)</b>	<b>Motion D.E. (No. 460 case)</b>	<b>Motion D.E. (No. 463 case)</b>
Barnes & Powell Electrical Company, Inc.	1640	1632
Carr and Duff, Inc.	1641	1633
Union Electric Company	1642	1634
Cargill, Incorporated; Georgia-Pacific, LLC; Delmarva Power & Light Company; Florida Power & Light Company; Atlantic City Electric Company; Occidental Chemical Corporation; Potomac Electric Power Company	1643, 1660 (suppl.), 1665 (suppl.)	1636, 1651 (suppl.), 1656 (suppl.)
Green Circle Growers, Inc.	1644	1635
The North Carolina Granite Corporation	1645	1637
Duke Energy Carolinas LLC	1647	1650
Ventech Engineers, Inc.	1648	1639
Guernsey-Muskingum Electric Cooperative Inc.	1649	1640
Santee Electric Cooperative, Inc.	1658	1648
IES Commercial, Inc.	1659	1649
Robert Bosch LLC	1654	1644
Warren Electric Cooperative, Inc.	1655	1645
The National Lime and Stone Company	1656	1646
Bedford Rural Electric Cooperative Inc.	1657	1647
Novartis Corporation	1666	1657
Koch Industries, Inc.	1667	1658

The motions have been fully briefed<sup>5</sup> and referred to the undersigned for disposition pursuant to 28 U.S.C. § 636(b)(1)(A). (See Public Docket Entries dated 25 and 26 Aug. 2015 (in both 460 and 463)).

### **Disposition of Motions**

Having considered the parties' motions and any respective responses in opposition, IT IS ORDERED as follows:

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<sup>5</sup> Plaintiffs Duke Energy Progress, LLC and Consolidation Coal Company, and third-party plaintiff PCS Phosphate Company, Inc. filed a joint response in opposition (D.E. 1661 (No. 460 case); D.E. 1652 (No. 463 case)) to certain motions.

1. Due to the parties having reached an agreement for either settlement or voluntary dismissal of all pending claims, the following motions seeking to excuse the in-person attendance of the party representative and counsel at the settlement sessions on 1-2 September 2015 and 24-25 September 2015 are ALLOWED.

<b>Movant(s)</b>	<b>Motion D.E. (No. 460 case)</b>	<b>Motion D.E. (No. 463 case)</b>
N.L. Industries, Inc.	1610	1602
Alcan Primary Products Corporation	1613	1605
Cogentrix Energy, LLC	1615	1607
Buist Electric, Inc.; GenCorp Inc.	1618	1610
Appalachian Power Company; General Extrusions, Inc.; Haines and Kibblehouse, Inc.; Kingsport Power Company; MidAmerican Energy Company; South Central Power Company; Sumter Electric Cooperative, Inc.; The Holladay Corporation	1621	1613
Southern Alloy Corporation	1622	1614
Monongahela Power Company; West Penn Power Company	1623	1615
Consolidation Coal Company; Duke Energy Progress, LLC <sup>6</sup>	1625	1617
East Kentucky Power Cooperative, Inc.; G&S Motor Equipment Company, Inc.; Jet Electric Motor Co., Inc.; P.C. Campana, Inc.; Pactiv Corporation; Mass. Electric Construction Co.	1626	1618
Caterpillar Inc.	1632	1624
Batesville Casket Company, Inc.	1634	1626
Huntsville Utilities	1635	1627
National Railroad Passenger Corporation	1637	1629
J.C. Blair Memorial Hospital	1638	1630
Barnes & Powell Electrical Company, Inc.	1640	1632
Union Electric Company	1642	1634
Cargill, Incorporated; Georgia-Pacific, LLC; Delmarva Power & Light Company; Florida Power & Light Company; Atlantic City Electric Company; Occidental Chemical Corporation; Potomac Electric Power Company	1643	1636
Duke Energy Carolinas LLC	1647	1650
Ventech Engineers, Inc	1648	1639
Santee Electric Cooperative, Inc.	1658	1648

<sup>6</sup> The parties being excused from attendance pursuant to this paragraph are the movants themselves except with respect to the motion filed by plaintiffs Consolidation Coal Company and Duke Energy Progress, LLC (D.E. 1625 (No. 460 case); D.E. 1617 (No. 463 case)), which seek to excuse the following defendants: Arkema, Inc.; BASF Corporation; Duquesne Light Company; Jessop Steel Company; PPL Electric Utilities Corp.; Tredegar Film Products Corp.; and Weyerhaeuser Company.

<b>Movant(s)</b>	<b>Motion D.E. (No. 460 case)</b>	<b>Motion D.E. (No. 463 case)</b>
IES Commercial, Inc	1659	1649
Warren Electric Cooperative, Inc.	1655	1645
Novartis Corporation	1666	1657
Koch Industries, Inc.	1667	1658

2. The following motions seeking to excuse the in-person attendance of William W. Pollock, co-counsel for Consolidation Coal Company, at the settlement sessions on 1-2 September 2015 and 24-25 September 2015 are ALLOWED.

<b>Movant(s)</b>	<b>Motion D.E. (No. 460 case)</b>	<b>Motion D.E. (No. 463 case)</b>
Consolidation Coal Company	1617	1609

3. The following motions seeking to excuse the in-person attendance of representatives from the insurance companies of Hartford Insurance Group and Arrowpoint Insurance, which are insurance carriers for defendant Carr and Duff, Inc., at the settlement session on 1-2 September 2015 are ALLOWED, and these representatives shall be available by telephone during the entirety of the settlement session.

<b>Movant(s)</b>	<b>Motion D.E. (No. 460 case)</b>	<b>Motion D.E. (No. 463 case)</b>
Carr and Duff, Inc.	1641	1633

4. The following motions seeking to excuse the in-person attendance of the party representative and counsel from attendance at the settlement sessions on 1-2 September 2015 and 24-25 September 2015 are ALLOWED subject to the movant reaching a settlement of all claims and the provision of notice of such settlement to the Special Master by telephone or e-mail no later than 31 August 2015.

<b>Movant(s)</b>	<b>Motion D.E. (No. 460 case)</b>	<b>Motion D.E. (No. 463 case)</b>
Robert Bosch LLC	1654	1644

5. The following motions seeking to excuse the in-person attendance of the party representative and counsel from attendance at the settlement session on 1-2 September 2015 are ALLOWED IN PART and DENIED IN PART.

<b>Movant(s)</b>	<b>Motion D.E. (No. 460 case)</b>	<b>Motion D.E. (No. 463 case)</b>
Danny Corporation; Electric Control Equipment Co.; Southland Electrical Supply, Inc.; St. Joseph Medical Center, Inc.; Tri-State Armature & Electrical Works, Inc.; United Technologies Corporation; Washington Suburban Sanitary Commission; Glenwood Resolution Authority, Inc.; Blue Ridge Electric Cooperative, Inc.; Sonoco Products Company; Gladieux Trading & Marketing Co., LP, and/or Limited Corporation; LWB Refractories Company; Dixon Lumber Company, Inc.; GKN Driveline North American, Inc.; Unimin Corporation; Broad River Electric Cooperative, Inc.; Pharmacia Corporation; Consumers Energy Company	1628	1620

a. Due to having reached an agreement for voluntary dismissal of all pending claims, the above motions are ALLOWED as to the following parties:

Danny Corporation; Electric Control Equipment Co.; Southland Electrical Supply, Inc.; St. Joseph Medical Center, Inc.; Tri-State Armature & Electrical Works, Inc.; United Technologies Corporation; Washington Suburban Sanitary Commission; Glenwood Resolution Authority, Inc.; and Blue Ridge Electric Cooperative, Inc.

b. Having carefully considered each of the grounds raised by the remaining movants, the court finds that they do not justify the relief sought given the importance of the in-person attendance requirement to the settlement proceedings in these cases.

Accordingly, the above motions are DENIED as to the following parties:

Sonoco Products Company; Gladieux Trading & Marketing Co., LP, and/or Limited Corporation; LWB Refractories Company; Dixon Lumber Company, Inc.; GKN Driveline North American, Inc.; Unimin Corporation; Broad River Electric Cooperative, Inc.; Pharmacia Corporation; Consumers Energy Company



6. The following motions to excuse the in-person attendance of the party representative and counsel at the settlement sessions on 1-2 September 2015 and 24-25 September 2015 are ALLOWED IN PART and DENIED IN PART.

<b>Movant(s)</b>	<b>Motion D.E. (No. 460 case)</b>	<b>Motion D.E. (No. 463 case)</b>
Guernsey-Muskingum Electric Cooperative Inc.	1649	1640

Specifically, the portion of the motions seeking to excuse the in-person attendance of local counsel for the movant is ALLOWED, and said local counsel shall be available by telephone during the entirety of the settlement session. The court has carefully considered each of the grounds raised by the movant in support of the portion of the motions seeking to excuse the in-person attendance of the party representative and special appearance counsel. However, the court finds that they do not justify the relief sought given the importance of the in-person attendance requirement to the settlement proceedings in these cases. Accordingly, this portion of the motions is DENIED.

7. Having carefully considered each of the grounds raised by the movants in support of the following motions, the court finds that they do not justify the relief sought given the importance of the in-person attendance requirement to the settlement proceedings in these cases. Accordingly, these motions to excuse the in-person attendance of the party representative and counsel at the settlement session on 1-2 September 2015 are DENIED.

<b>Movant(s)</b>	<b>Motion D.E. (No. 460 case)</b>	<b>Motion D.E. (No. 463 case)</b>
Green Circle Growers, Inc.	1644	1635
The National Lime and Stone Company	1656	1646
Bedford Rural Electric Cooperative Inc.	1657	1647

8. Having carefully considered each of the grounds raised by the movants in support of the following motions, the court finds that they do not justify the relief sought given the

importance of the in-person attendance requirement to the settlement proceedings in these cases. Accordingly, these motions to excuse the in-person attendance of the party representative and counsel at the settlement sessions on 1-2 September 2015 and 24-25 September 2015 are DENIED.

<b>Movant(s)</b>	<b>Motion D.E. (No. 460 case)</b>	<b>Motion D.E. (No. 463 case)</b>
Truland Corporation	1624	1616
Saint Augustine's College	1627	1619
Bay Mechanical & Electrical Corporation	1630	1622
Riley Power Inc.	1639	1631
The North Carolina Granite Corporation	1645	1637

SO ORDERED, this 26th day of August 2015.

  
James E. Gates  
United States Magistrate Judge